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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 TINA MESHELL HAYES,
12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting
15 Commissioner of the Social
16 Security Administration,
17 Defendant.
18

Case No. CV 15-4412 SS

MEMORANDUM DECISION AND ORDER

19
20 **I.**

21 **INTRODUCTION**
22

23 Plaintiff Tina Meshell Hayes ("Plaintiff") seeks review of
24 the final decision of the Commissioner of the Social Security
25 Administration (the "Commissioner" or the "Agency") denying her
26 application for Disability Insurance Benefits and Supplemental
27 Security Income. The parties consented, pursuant to 28 U.S.C. §
28 636(c), to the jurisdiction of the undersigned United States

1 Magistrate Judge. For the reasons stated below, the decision of
2 the Commissioner is AFFIRMED.

3
4 **II.**

5 **PROCEDURAL HISTORY**

6
7 On June 11, 2012, Plaintiff filed applications for Title II
8 Disability Insurance Benefits ("DIB") and Title XVI Supplemental
9 Security Income ("SSI"). (Administrative Record ("AR") 10). In
10 both applications, Plaintiff alleged a disability onset date of
11 October 24, 2010. (Id.). The Agency denied Plaintiff's
12 applications on November 8, 2012. (AR 67, 71). On January 3,
13 2013, Plaintiff filed a written request for a hearing before an
14 Administrative Law Judge ("ALJ"). (AR 76). On July 25, 2013,
15 Plaintiff appeared and testified at the hearing held before ALJ
16 David J. Agatstein. (AR 23). Vocational expert Ms. Kristan V.
17 Sagliocco and medical experts Glenn E. Griffin, PH.D., and Ronald
18 Kendrick, M.D., also testified at the hearing. (AR 10). On
19 September 9, 2013, the ALJ issued a decision denying benefits. (AR
20 9).

21
22 Plaintiff requested review of the ALJ's decision, which the
23 Appeals Officer denied on April 10, 2015. (AR 1-4). Plaintiff
24 filed this action on June 10, 2015. (Dkt. No. 1).

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III.**FACTUAL BACKGROUND**

Plaintiff was born on August 20, 1964 and was forty-eight (48) years old at the time of the 2013 hearing. (AR 31). Plaintiff was forty-six (46) years old at the time of her alleged disability onset date. (AR 43). Plaintiff testified that she dropped out of high school in tenth grade and later obtained a G.E.D. (AR 31, 148). Plaintiff speaks and understands English. (AR 25). Plaintiff previously worked as a customer service representative at a grocery store and as a security guard. (AR 148). Plaintiff alleges that she suffers from pain in her neck, back, left leg, and right wrist. (AR 33, 43, 56). Plaintiff also alleges that she suffers from depression, but that her depression does not interfere with her ability to work. (AR 33).

A. Medical Records

From October 25, 2010 to July 11, 2013, Plaintiff underwent a series of physical and psychiatric evaluations. (AR 268, 327). Plaintiff was diagnosed with pain stemming from her neck, back, and right wrist. (AR 178-246, 296-300, 326-334).

1. Physical Evaluations And Treatments

Specifically, between October 25, 2010 to February 29, 2012, Plaintiff visited Advanced Care Specialists for the evaluation and treatment of her back in connection with a worker's compensation claim. (AR 15, 251, 268). On March 24, 2011, physician Dr. Randy S. Higashi, D.C., examined Plaintiff.¹ (AR 178). On April 16, 2011, Dr. Amjad Safvi, M.D., conducted an MRI of Plaintiff's lumbar spine and found mild degenerative disc disease. (AR 205-06).

On April 26, 2011, physician Dr. Ronald M. Schilling, M.D., diagnosed Plaintiff with myofascial "low back pain[, which] radiat[ed] to both legs with numbness and tingling to both feet." (AR 245-46). On November 8, 2011, Dr. Higashi prescribed medications for Plaintiff, including "Vicodin, Naproxen, Gabapentin and Prilosec[.]" (AR 191). On January 10, 2012, Dr. Edward Opoku, D.O., confirmed Dr. Higashi's diagnosis of radiculopathy and continued Plaintiff's treatment. (AR 191-92). On February 29, 2012, Dr. Higashi treated Plaintiff with LSO-Flexible² to support her back. (AR 251).

¹ According to John M. Caridi, M.D., Matthias Pumberger, M.D., and Alexander P. Hughes, M.D., cervical radiculopathy is "a syndrome of pain and/or sensorimotor deficits due to compression of a cervical nerve root." John M. Caridi, M.D., et al., Cervical Radiculopathy: A Review, NIH (Sept. 9, 2011), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3192889/>.

² According to Jacek Cholewicki, PH.D., Angela S. Lee, B.Sc., N. Peter Reeves, PH.D., and David C. Morrisette, PT, PH.D., an LSO or a Lumbar-sacral Orthosis is a "class I medical device[] that [is] used in conservative and postoperative management of low back pain." Jacek Cholewicki, PH.D., et al., Comparison of trunk stiffness provided by different design characteristics of

1 From October 13, 2012 to July 11, 2013, Plaintiff visited
 2 Medpro Services, Inc., UC Family Medicine Center, and Beverly Tower
 3 Wilshire for the evaluation and treatment of her wrist and neck.
 4 (AR 296, 310-34). Specifically, on October 13, 2012, Plaintiff
 5 went to Medpro Services, Inc., where Dr. Curtis Kephart, M.D.,
 6 diagnosed Plaintiff with "mild wrist arthritis secondary to a non-
 7 displaced fracture[, and] cervical spondylosis with myofascial neck
 8 pain[.]" (AR 296-300). Dr. Kephart concluded that Plaintiff
 9 "could lift and carry 50 pounds occasionally and 25 pounds
 10 frequently[,] . . . push and pull frequently[,] . . . sit, walk
 11 and stand for six hours out of an eight-hour day[]" without an
 12 assistive device. (AR 300). Dr. Kephart also concluded that
 13 "[t]here were no manipulative or postural limitations[]" and that
 14 "the right hand can do fine and gross manipulations frequently[.]"
 15 (Id.). Plaintiff "was treated with pain management, acupuncture
 16 and physical therapy." (AR 190).

17
 18 On January 10, 2013, Plaintiff went to the U.C. Family Medical
 19 Center where Dr. Uche Chukwudi, M.D., x-rayed Plaintiff's right
 20 wrist and found a fracture of the distal navicular bone. (AR 311-
 21 12). In addition, Dr. Chukwudi found Plaintiff's cholesterol level
 22 to be out of range and poorly controlled. (AR 316-17). From March
 23 22, 2013 to July 11, 2013, Plaintiff sought treatment at Beverly
 24 Tower Wilshire for her wrist and back. (AR 326-34). From March
 25 22, 2013 to May 10, 2013, Dr. Siamak Dardashti, M.D., took an MRI

27 _____
 28 lumbosacral orthoses, NIH (Dec. 9, 2009),
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2887766/>.

1 of Plaintiff's back and found "broad based disc osteophyte³,
 2 moderate left lateral recess and foraminal narrowing." (AR 329-
 3 31). On July 11, 2013, Dr. Tinoosh Zand, M.D., took an MRI of
 4 Plaintiff's right wrist and found "a chronic non[-]union⁴ fracture
 5 of the distal pole of the scaphoid without evidence for
 6 osteonecrosis.⁵" (AR 326-27). Dr. Zand also found "[p]robable
 7 chronic injury to the radial collateral ligament with abnormal
 8 signal at the radial styloid[.]" (Id.).

10 **2. Psychiatric Evaluation**

12 On October 10, 2012, Plaintiff visited Medpro Services, Inc.,
 13 where Dr. Nina Kapitanski, M.D., conducted a psychiatric evaluation
 14 and diagnosed Plaintiff with "a depressive disorder secondary to
 15 general medical condition." (AR 269-73). Dr. Kapitanski noted
 16 that Plaintiff "was well kept, well nourished and in no apparent
 17 distress." (AR 271). Plaintiff acknowledged to Dr. Kapitanski
 18 that she had a prior use of "street drugs" but stopped such usage

19 _____
 20 ³ According to Atul Goel, osteophytes "are commonly referred to as
 21 bone spurs that form along the joint margin." Atul Goel, M.D., Is
 22 it necessary to resect osteophytes in degenerative spondylotic
myelopathy, NIH (Jan.-June 2013)
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3872653/>.

23 ⁴ According to Marsh D, a non-union is "the cessation of both the
 24 periosteal and endosteal healing responses without bridging." Marsh D, Concepts of fracture union, delayed union, and nonunion.,
 NIH, (Oct. 1998), <http://www.ncbi.nlm.nih.gov/pubmed/9917623>.

25 ⁵ According to the National Institute of Arthritis and
 26 Musculoskeletal and Skin Diseases, an osteonecrosis "is a disease
 27 caused by reduced blood flow to bones in the joints." What is
Osteonecrosis? Fast Facts: An Easy-to-Read Series of Publications
 28 for the Public, NIH, (Nov. 2014),
[http://www.niams.nih.gov/health_info/osteonecrosis/osteonecrosis](http://www.niams.nih.gov/health_info/osteonecrosis/osteonecrosis_ff.asp)
[ff.asp](http://www.niams.nih.gov/health_info/osteonecrosis/osteonecrosis_ff.asp).

1 in 1999. (AR 270). Dr. Kapitanski also found that Plaintiff had
2 "no difficulty maintaining composure and even temperament." (Id.).
3 Dr. Kapitanski then noted that Plaintiff "exhibited no evidence of
4 auditory or visual hallucinations, delusions, or illusions[]" and
5 that Plaintiff "denied current suicidal or homicidal ideations,
6 plan, or intent." (AR 269). Dr. Kapitanski reported that Plaintiff
7 worked as a security guard for six years. (AR 270).

8
9 In addition, Dr. Kapitanski "opined that [Plaintiff] had no
10 past psychiatric history." (AR 272). Dr. Kapitanski also noted
11 that "if [Plaintiff] received [psychiatric] treatment, her symptoms
12 would significantly improve[.]" (Id.). Dr. Kapitanski continued
13 that Plaintiff "had no difficulties in maintaining social
14 functioning[]" and had "mild difficulties focusing and maintaining
15 attention[] . . . concentration, persistence, and pace." (Id.).
16 According to Dr. Kapitanski, Plaintiff "would have no difficulties
17 performing work activities on a consistent basis without special
18 or additional supervision[]" and "no limitations accepting
19 instructions from supervisors and interacting with coworkers and
20 with the public." (Id.). Furthermore, Dr. Kapitanski found that
21 Plaintiff "was intellectually and psychologically capable of
22 performing activities of daily living[.]" (Id.). Dr. Kapitanski
23 concluded that Plaintiff "would have no limitations performing
24 simple and repetitive tasks and mild limitations performing
25 detailed and complex tasks." (Id.). Dr. Kapitanski also concluded
26 that Plaintiff "would have mild difficulties handling the usual
27 stresses, changes and demands of gainful employment." (Id.).
28

1 **B. Plaintiff's Testimony**

2
3 On July 25, 2013, Plaintiff testified about her background,
4 including her education level, work history, and medical history.
5 (AR 31-34). Plaintiff stated that she "dropped out [of high school]
6 in 10th grade and [] went back to school in 2000 and got [her] high
7 school diploma." (AR 31). Plaintiff stated that she was currently
8 unemployed and that in the fifteen years before the date of her
9 testimony, she was employed as a security guard and a grocery store
10 employee. (AR 31-32). Plaintiff also testified that her previous
11 employment ended because of "a fall down[,] " which precipitated
12 pain in her neck and eventually in her back and right wrist. (AR
13 32-33).

14
15 Furthermore, Plaintiff stated that she did not have a mental
16 impairment that would interfere with her ability to work. (AR 33).
17 Plaintiff concluded by explaining that her right wrist became
18 problematic after "couple of fall downs" notwithstanding an
19 untreated non-union fracture that occurred twenty years ago. (AR
20 33-34).

21
22 **IV.**

23 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

24
25 To qualify for disability benefits, a claimant must
26 demonstrate a medically determinable physical or mental impairment
27 that prevents her from engaging in substantial gainful activity
28 and that is expected to result in death or to last for a continuous

1 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,
2 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The
3 impairment must render the claimant incapable of performing the
4 work she previously performed and incapable of performing any other
5 substantial gainful employment that exists in the national economy.
6 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42
7 U.S.C. § 423(d)(2)(A)).

8
9 To decide if a claimant is entitled to benefits, an ALJ
10 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
11 steps are:

12
13 (1) Is the claimant presently engaged in substantial
14 gainful activity? If so, the claimant is found not
15 disabled. If not, proceed to step two.

16 (2) Is the claimant's impairment severe? If not, the
17 claimant is found not disabled. If so, proceed to
18 step three.

19 (3) Does the claimant's impairment meet or equal one of
20 the specific impairments described in 20 C.F.R.
21 Part 404, Subpart P, Appendix 1? If so, the
22 claimant is found disabled. If not, proceed to
23 step four.

24 (4) Is the claimant capable of performing his past
25 work? If so, the claimant is found not disabled.
26 If not, proceed to step five.

1 (5) Is the claimant able to do any other work? If not,
2 the claimant is found disabled. If so, the claimant
3 is found not disabled.

4
5 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
6 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R.
7 §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

8
9 In between steps three and four, the ALJ must determine the
10 claimant's residual functional capacity ("RFC"). (20 CFR
11 416.920(e)). To determine the claimant's RFC, the ALJ must
12 consider all of the claimant's impairments, including impairments
13 that are not severe. 20 CFR § 416.1545(a)(2).

14
15 The claimant has the burden of proof at steps one through
16 four, and the Commissioner has the burden of proof at step five.
17 Bustamante, 262 F.3d at 953-54. "Additionally, the ALJ has an
18 affirmative duty to assist the claimant in developing the record
19 at every step of the inquiry." Id. at 954. If, at step four, the
20 claimant meets her burden of establishing an inability to perform
21 past work, the Commissioner must show that the claimant can perform
22 some other work that exists in "significant numbers" in the
23 national economy, taking into account the claimant's RFC, age,
24 education, and work experience. Tackett, 180 F.3d at 1098, 1100;
25 Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1),
26 416.920(g)(1). The Commissioner may do so by the testimony of a
27 vocational expert or by reference to the Medical-Vocational
28 Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2

1 (commonly known as "the Grids"). Osenbrock v. Apfel, 240 F.3d
2 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
3 (strength-related) and non-exertional limitations, the Grids are
4 inapplicable and the ALJ must take the testimony of a vocational
5 expert. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing
6 Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

7
8 **V.**

9 **THE ALJ'S DECISION**

10
11 The ALJ employed the five-step sequential evaluation process
12 and concluded that Plaintiff "has not been under a disability, as
13 defined in the Social Security Act, from October 24, 2010, through
14 the date of this decision[.]" (AR 19). At step one, the ALJ found
15 that Plaintiff "[had] not engaged in substantial gainful activity
16 since October 24, 2010, the alleged onset date[.]" (AR 12).

17
18 At step two, the ALJ found that Plaintiff "[had] severe
19 impairments including degenerative disc disease and osteoarthritis
20 in the cervical and lumbar spine, osteoarthritis of the right wrist
21 and a depressive disorder secondary to her general medical
22 condition[.]" (Id.). The ALJ found, however, that Plaintiff's
23 "medically determinable impairments considered singly and in
24 combination, do not cause more than minimal limitation in the
25 [Plaintiff's] ability to perform basic work activities." (AR 13).

26
27 At step three, the ALJ found that Plaintiff "[did] not have
28 an impairment or combination of impairments that [met] or medically

1 [equaled] one of the listed impairments in 20 C.F.R. Part 404,
2 Subpart P, Appendix 1[.]” (Id.). Notwithstanding evidence of
3 Plaintiff’s physical impairments, the ALJ concluded that
4 Plaintiff’s physical impairments “[did] not approach the severity
5 of an impairment listed in sections 1.00 or 12.04 of the Listings.”
6 (Id.).

7
8 Furthermore, the ALJ found that “[Plaintiff’s] mental
9 impairments, considered singly and in combination, [did] not meet
10 or medically equal the criteria of listing 12.04.” (Id.). In
11 order to meet or medically equal the criteria of listing 12.04,
12 “the mental impairments must result in at least two of the
13 following: marked restriction of activities of daily living; marked
14 difficulties in maintaining social functioning; marked
15 difficulties in maintaining concentration, persistence, or pace;
16 or repeated episodes of decompensation, each of extended duration.”
17 (Id.). The ALJ stated that Plaintiff had no restrictions in
18 activities of daily living and moderate difficulties in social
19 functioning. (Id.). With regard to concentration, persistence or
20 pace, the ALJ found that Plaintiff had mild difficulties. (Id.).
21 The ALJ also found that the Plaintiff “[had] experienced no
22 episodes of decompensation, each of extended duration.” (Id.).
23 Thus, the ALJ concluded that Plaintiff’s mental impairments did
24 not meet or medically equal the criteria of listing 12.04. (AR
25 15-16).

26
27 Next, the ALJ found that “[Plaintiff had] the residual
28 functional capacity to perform a range of sedentary work as defined

1 in 20 CFR 404.1567(a) and 416.967(a)." (AR 13-14). In assessing
2 Plaintiff's RFC, the ALJ "considered all symptoms and the extent
3 to which these symptoms can reasonably be accepted as consistent
4 with the objective medical evidence" and opinion evidence. (Id.).
5 The ALJ found that "[Plaintiff's] medically determinable
6 impairments could reasonably be expected to cause the alleged
7 symptoms; however, the [plaintiff's] statements concerning the
8 intensity, persistence and limiting effects of these symptoms
9 [were] not entirely credible[.]" (AR 15).

10
11 According to the ALJ, although Plaintiff's significant work
12 history enhanced her credibility, the medical record and testimony
13 of the medical experts undermined her credibility because Plaintiff
14 was found to be "capable of performing work at the sedentary level."
15 (AR 17). Specifically, Dr. Kephart and Dr. Kendrick each found
16 that Plaintiff was able to "lift and carry 10 pounds occasionally
17 and frequently." (AR 14, 17). In addition, Dr. Kephart and Dr.
18 Kendrick found that Plaintiff was able to sit for six hours out of
19 an eight-hour day, stand and walk for at least four hours out of
20 an eight-hour day with normal breaks, "frequently, but not
21 constantly use her right arm[] . . . [and] frequently, but not
22 constantly interact with supervisors, co-workers and the public."
23 (Id.).

24
25 Furthermore, regarding Plaintiff's mental health, the ALJ
26 found that "when [Plaintiff] follows her prescribed medication,
27 her symptoms are reduced." (AR 17). In addition, although
28 Plaintiff was not receiving mental health treatment, Dr. Kapitanski

1 testified that Plaintiff's symptoms would significantly improve if
2 she did receive treatment. (Id.). Plaintiff also "admitted that
3 she did not have a psychiatric/mental disorder that would interfere
4 with work activity[]" and the record demonstrated that she did not
5 have a history of mental health treatment. (Id.).
6

7 At step four, the ALJ determined that Plaintiff could not
8 perform her past relevant work as a security guard, bus driver,
9 bagger, home attendant, and food sales clerk. (AR 18). At step
10 five, the ALJ considered Plaintiff's age, education, work
11 experience, and RFC to determine whether jobs existed in
12 significant numbers in the national economy that Plaintiff was able
13 to perform. (Id.). Based on the Vocational Expert's testimony,
14 the ALJ found that there were jobs existing in significant numbers
15 in the national economy that Plaintiff could perform, even though
16 Plaintiff could not perform work at all exertional levels because
17 of some nonexertional limitations. (AR 18-19). Potential
18 available jobs included assembler, inspector, or lens inserter.
19 (AR 18-19). The ALJ further determined that such jobs existed in
20 significant numbers in both the local and national economy. (Id.).
21

22 VI.

23 STANDARD OF REVIEW

24

25 Under 42 U.S.C. § 405(g), a district court may review the
26 Commissioner's decision to deny benefits. The court may set aside
27 the Commissioner's decision when the ALJ's findings are based on
28 legal error or are not supported by substantial evidence in the

1 record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th
2 Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v. Chater,
3 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen, 885 F.2d
4 597, 601 (9th Cir. 1989)); see also Simon v. Colvin, 749 F.3d 1106,
5 1106 (9th Cir. 2014) (citing Smolen 80 F.3d at 1279).

6
7 “Substantial evidence is more than a scintilla, but less than
8 a preponderance.” Reddick, 157 F.3d at 720 (citing Jamerson v.
9 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is “relevant
10 evidence which a reasonable person might accept as adequate to
11 support a conclusion.” (Id.) (citing Jamerson, 112 F.3d at 1066;
12 Smolen, 80 F.3d at 1279). To determine whether substantial
13 evidence supports a finding, the court must “‘consider the record
14 as a whole, weighing both evidence that supports and evidence that
15 detracts from the [Commissioner’s] conclusion.’” Aukland, 257 F.3d
16 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
17 1993)). If the evidence can reasonably support either affirming
18 or reversing that conclusion, the court may not substitute its
19 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
20 21 (citing Flaten v. Sec’y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

22 VII.

23 DISCUSSION

24
25 Plaintiff contends that the ALJ erred by improperly finding
26 Plaintiff’s testimony less than credible. (See generally
27 Memorandum in Support of Plaintiff’s Complaint (“MSPC”) at 2-7).
28

1 The Court disagrees. For the reasons discussed below, the ALJ's
2 decision is AFFIRMED.

3
4 **A. The ALJ Provided Clear And Convincing Reasons To Reject**
5 **Plaintiff's Pain Testimony**

6
7 **1. Legal Standard For The Assessment Of Credibility**

8
9 When assessing a claimant's credibility, the ALJ must engage
10 in a two-step analysis. Molina v. Astrue, 674 F.3d 1104, 1112 (9th
11 Cir. 2012) (citing Vazquez v. Astrue, 572 F.3d 586, 591 (9th Cir.
12 2009)). The ALJ must determine if there is medical evidence of an
13 impairment that could reasonably produce the symptoms alleged.
14 (Id.). If there is, the ALJ must make specific credibility findings
15 to reject the testimony. (Id.). The ALJ may not discredit a
16 claimant's testimony of pain and deny disability benefits solely
17 because the degree of pain alleged by the claimant is not supported
18 by objective medical evidence. Burch v. Barnhart, 400 F.3d 676,
19 680 (9th Cir. 2005); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th
20 Cir. 1991).

21
22 In assessing the claimant's testimony, the ALJ may consider
23 many factors, including:

- 24
25 (1) ordinary techniques of credibility evaluation, such
26 as the claimant's reputation for lying, prior
27 inconsistent statements concerning the symptoms, and
28

1 other testimony by the claimant that appears less than
2 candid;

3 (2) unexplained or inadequately explained failure to seek
4 treatment or to follow a prescribed course of
5 treatment; and

6 (3) the claimant's daily activities.

7
8 Smolen, 80 F.3d at 1284. Additionally, the ALJ may discredit the
9 claimant's testimony where the claimant's normal activities can
10 transfer to the work setting. Burch, 400 F.3d at 681 (noting that
11 the ALJ may discredit the claimant's allegations by making specific
12 findings related to daily activities involving skills that are
13 transferrable to the workplace); Morgan v. Comm'r of Soc. Sec.
14 Admin., 169 F.3d 595, 600 (9th Cir. 1999); see also Vertigan v.
15 Halter, 260 F.3d 1044, 1049 (9th Cir. 2001).

16 17 **2. The ALJ Provided Clear and Convincing Reasons**

18
19 The ALJ provided five specific grounds for rejecting
20 Plaintiff's pain testimony: (1) the consulting psychiatrist's
21 finding that Plaintiff was able to perform simple and repetitive
22 tasks; (2) Plaintiff's lack of psychiatric treatment; (3) the
23 psychologist medical expert's testimony of Plaintiff's
24 limitations; (4) efficacy and lack of side effects from the use of
25 medication; and (5) findings that Plaintiff was able to work at
26 the sedentary level. (AR 17).

1 First, in rejecting Plaintiff's contentions regarding her
2 mental limitations, the ALJ considered the fact that the
3 psychiatrist, Dr. Kapitanski, found Plaintiff able to perform
4 simple and repetitive tasks. (Id.). According to Dr. Kapitanski,
5 Plaintiff "was able to perform simple, repetitive tasks; would have
6 no difficulties performing work activities on a consistent basis
7 without special or additional supervision and would have mild
8 limitations completing a normal workday or workweek due to her
9 mental condition." (Id.). Thus, the ALJ found that the medical
10 evidence was inconsistent with Plaintiff's contention that she
11 could not perform any work due to pain, to the extent the pain
12 allegedly impacted her concentration or mental condition. (AR 15-
13 17). See Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)
14 (holding that "[w]hile subjective pain testimony cannot be rejected
15 on the sole ground that it is not fully corroborated by objective
16 evidence, the medical evidence is still a relevant factor in
17 determining the severity of the claimant's pain and its disabling
18 effects").

19
20 Second, the ALJ took note of Plaintiff's lack of psychiatric
21 treatment history and failure to undergo mental health treatment,
22 again to reject Plaintiff's testimony regarding her mental
23 impairments. (AR 17, 272). An ALJ may find that a plaintiff's
24 failure to take prescribed medications or pursue treatment that
25 would alleviate the alleged symptoms supports a finding that
26 plaintiff is not credible. See Orn v. Astrue, 495 F.3d 625, 636
27 (9th Cir. 2007) (citing Fair, 885 F.2d at 603); Bunnell, 947 F.2d
28 at 346; 20 CFR § 404.1530(a); 416.930(a) ("In order to get benefits,

1 you must follow treatment prescribed by your physician if this
2 treatment can restore your ability to work."); 20 CFR §
3 404.1530(b), 416.930(b) ("If you do not follow the prescribed
4 treatment without a good reason, we will not find you disabled.").

5
6 Here, Plaintiff claimed that she felt "depressed sometimes
7 because of [her] neck, back, and leg." (AR 269). However,
8 according to Dr. Kapitanski, despite Plaintiff's alleged mental
9 health problem, Plaintiff did not manifest disabling symptoms and
10 exhibited "no difficulty interacting with [people and] . . .
11 maintaining composure and even temperament." (AR 272). Moreover,
12 Plaintiff did not seek psychiatric treatment nor was there any
13 evidence of prior psychiatric treatment. (AR 15). Accordingly,
14 the ALJ properly used this finding to determine that Plaintiff's
15 testimony was less than fully credible.

16
17 Third, the ALJ used testimony from psychologist medical
18 expert, Dr. Glenn Griffin. (AR 16-17). Dr. Griffin testified that
19 the Plaintiff had "moderate difficulty in social functioning[]"
20 and "mild difficulty in concentration, persistence and pace[.]"
21 (AR 36). In addition, Dr. Griffin observed in the medical record
22 that Plaintiff would have mild problems with detail and complex
23 instructions and mild limitation in interacting with the public
24 and co-workers. (AR 37). Dr. Griffin's observations were clear
25 and convincing reasons to reject Plaintiff's subjective testimony.

26
27 Although non-examining physicians were not given as much
28 weight as a treating physician, an ALJ may consider the opinion of

1 non-examining physicians. See Lester v. Chater, 81 F.3d 821, 830
2 (9th Cir. 1995) (citing Winans v. Bowen, 853 F.2d 643, 647 (9th Cir.
3 1987)); CFR § 404.1527(e). If an ALJ rejected an examining
4 physician's opinion in favor of a non-examining physician's
5 opinion, the ALJ "must provide clear and convincing reasons." See
6 Lester, 81 F.3d at 830 (citation omitted). Here, although there
7 were minor inconsistencies between Dr. Kapitanski's and Dr.
8 Griffin's conclusions regarding Plaintiff's limitations, the ALJ
9 did not compare and reject either of the mental health
10 professional's conclusions.

11
12 Instead, the ALJ used Dr. Griffin's opinion, which favored
13 Plaintiff by finding a more severe limitation, to support the ALJ's
14 ultimate findings. (AR 17). For example, the ALJ noted that Dr.
15 Griffin found Plaintiff to have "moderate limitations in
16 maintaining social functioning and maintaining concentration,
17 persistence and pace[]" despite Dr. Kapitanski's finding that
18 Plaintiff "had no difficulties in maintaining social functioning[]"
19 and had "mild difficulties focusing and maintaining attention[] .
20 . . concentration, persistence, and pace." (AR 17, 272). Moreover,
21 the ALJ used Dr. Griffin's opinion in conjunction with Dr.
22 Kapitanski's finding, which formed a consensus that Plaintiff's
23 "symptoms [did] not preclude her from performing simple, repetitive
24 to complex work with some minor limitations." (AR 17). Therefore,
25 the ALJ properly considered the opinion of Dr. Griffin regarding
26 Plaintiff's mental health in determining that Plaintiff's testimony
27 was less than fully credible.
28

1 Fourth, the ALJ noted that Plaintiff would likely improve her
2 symptoms with treatment. (Id.). Specifically, Dr. Kapitanski
3 reported that Plaintiff's mental health would "significantly
4 improve" if Plaintiff underwent treatment. (AR 272). Again,
5 Plaintiff's failure to seek treatment suggests that her symptoms
6 were not as severe as she alleged. (Id.).
7

8 Lastly, in rejecting Plaintiff's subjective pain testimony,
9 the ALJ noted that the orthopedic medical expert, Dr. Kendrick,
10 found Plaintiff able to perform at the sedentary level. (AR 17).
11 Specifically, the ALJ used Dr. Kendrick's opinion "that the
12 [Plaintiff's] residual functional capacity is for light to
13 sedentary work [because] [s]he can frequently use her right hand[,]
14 . . . lift and carry 20 pounds occasionally and 10 pounds
15 frequently[]" and "is limited to standing and walking for 4 hours
16 out of an 8 hour day and sitting for 6 hours out of an 8 hour day
17 with normal breaks." (AR 16-17, 35).
18

19 Despite Plaintiff's subjective pain testimony that her
20 physical impairments undermine her ability to work, Dr. Kendrick's
21 testimony and review of the medical evidence demonstrates that
22 Plaintiff is able to work with limitations. Thus, the ALJ properly
23 relied on Dr. Kendrick's testimony to reject Plaintiff's testimony
24 regarding her orthopedic limitations. Moreover, the ALJ properly
25 concluded that all of the medical evidence undermines Plaintiff's
26 testimony regarding the intensity, persistence and effects of her
27 symptoms. Accordingly, the ALJ provided clear and convincing
28 reasons for rejecting Plaintiff's pain testimony.

1
2 **B. The ALJ's Findings Are Subject To A Harmless Error Standard**

3
4 The ALJ's rejection of Plaintiff's testimony is subject to a
5 harmless error standard. "The burden is on the party claiming
6 error to demonstrate not only the error, but also that it affected
7 his 'substantial rights,' which is to say, not merely his
8 procedural rights." Ludwig v. Astrue, 681 F.3d 1047, 1054 (9th
9 Cir. 2012). Therefore, in deciding whether to remand for error, a
10 reviewing court must consider "an estimation of the likelihood that
11 the result would have been different." (Id. at 1055).

12
13
14 ALJ errors in social security cases are harmless if they are
15 "inconsequential to the ultimate nondisability determination."
16 Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (quoting
17 Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1099 (9th
18 Cir. 2014)). The court will set aside a denial of social security
19 benefits "only if the denial is unsupported by substantial evidence
20 in the administrative record or is based on legal error." Marsh
21 v. Colvin, 792 F.3d 1170, 1172 (9th Cir. 2015). Even where the
22 ALJ reaches a nondisability finding for invalid reasons, the court
23 will not reverse the ALJ's decision if the error was harmless. See
24 Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d 1155, 1162 (9th
25 Cir. 2008) (reviewing adverse credibility finding for harmless
26 error, citing Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190,
27 1197 (9th Cir. 2004)). "[T]he relevant inquiry in this context is
28 not whether the ALJ would have made a different decision absent

1 any error, . . . it is whether the ALJ's decision remains legally
2 valid, despite such error." (Id.); see also Molina v. Astrue, 674
3 F.3d 1104, 1111 (9th Cir. 2012) (court "must uphold the ALJ's
4 findings if they are supported by inferences reasonably drawn from
5 the record").

6
7 Even though courts apply the harmless error doctrine
8 cautiously in social security cases, no "rigid rule" applies to
9 the degree of certainty required to conclude that an ALJ's error
10 was harmless. Marsh, 792 F.3d at 1173. Although remand is
11 appropriate where "the circumstances of the case show a substantial
12 likelihood of prejudice" from the error, remand is not appropriate
13 where the error's harmlessness is clear. McLeod v. Astrue, 640
14 F.3d 881, 888 (9th Cir. 2010).

15
16 Here, the ALJ's error, if any, is harmless because the error
17 is related to the overall clarity, not substance, of the ALJ's
18 opinion. The ALJ's decision may not have specifically labeled the
19 reasons he rejected Plaintiff's testimony, but it does not reflect
20 a failure to provide reasons, as Plaintiff contends. (MSPC at 2-
21 7). The clarity issue in this case is "inconsequential to the
22 ultimate nondisability determination" because the grounds for the
23 ALJ's decision are present in the opinion, regardless of any
24 alleged difficulty in identifying those grounds. Brown-Hunter,
25 806 F.3d at 492. (AR 17). Furthermore, the ALJ grounded his
26 decision with substantial evidence from the medical record and
27 medical expert testimony. (AR 17). As evident from the discussion
28 of the ALJ's decision above, the reasons provided are supported by

1 substantial evidence in the record and are legitimate grounds to
2 reject Plaintiff's testimony.

3
4 In sum, the ALJ offered clear and convincing reasons supported
5 by substantial evidence for finding Plaintiff's subjective
6 testimony less than fully credible. Moreover, any error in the
7 description of those reasons, if any, is harmless.

8
9
10 **VIII.**

11 **CONCLUSION**

12
13 Consistent with the foregoing, IT IS ORDERED that Judgment be
14 entered AFFIRMING the decision of the Commissioner. The Clerk of
15 the Court shall serve copies of this Order and the Judgment on
16 counsel for both parties.

17
18 DATED: July 7, 2016

19 /s/
SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

20
21 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS, WESTLAW OR**
22 **OTHER LEGAL DATABASE.**